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IN THE

Supreme Court of the United States

October Term, 1950

No. 224.

ANDREW MACKAY,
Appellant,

vs.

LOEW'S INCORPORATED, a corporation,
Appellee.

SOREN P. THORSEN,
Appellant,

vs.

WARNER BROTHERS PICTURES, INC., a corporation,
Appellee.

RALPH W. COLLINS,
Appellant,

vs.

REPUBLIC PRODUCTIONS, INCORPORATED, a corporation,
Appellee.

C. EUGENE PARKS,
Appellant,

vs.

R.K.O. RADIO PICTURES, INC., a corporation,
Appellee.

JOHN I. MURRAY,
Appellant,

vs.

COLUMBIA PICTURES CORPORATION, a corporation,
Appellee.

JAMES VINCENT,
Appellant,

vs.

UNIVERSAL PICTURES COMPANY, INC., a corporation,
Appellee.

BENNETT SIMMONS,
Appellant,

vs.

TWENTIETH CENTURY-FOX FILM CORPORATION, a corporation,
Appellee.

CHARLES P. HILLMAN,
Appellant,

vs.

PARAMOUNT PICTURES, INC., a corporation,
Appellee.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Additional Statement of Facts.

These eight cases are each based upon the same complaint, except for the formal allegations, and have been consolidated for all purposes. The complaints originally filed in the cases were for declaratory relief [R. p. 2] and were dismissed with leave to amend by the District Court (84 Fed. Supp. 676). Thereafter, amended complaints for damages were filed [R. p. 19] which complaints were dismissed on motion with leave to amend [R. p. 77]. Plaintiffs declined to amend [R. p. 78] and formal dismissals followed [R. p. 80]. The dismissals were affirmed by the Ninth Circuit Court of Appeals (182 F. 2d 170). In each case an employee is suing the motion picture production company which previously employed him, jurisdiction being based upon diversity of citizenship and the allegation of the requisite jurisdictional amount [R. p. 19].

For convenience, we will refer to the group of cases as if there were but one case, *Mackay v. Loew's, Incorporated.*

This case arises against the same background as does *Schatte v. International Alliance* (180 F. 2d 158), and *Studio Carpenters Local No. 946 v. Loew's, Inc.* (182 F. 2d 168), in which cases Petitions for Certiorari also have been filed and in which cases these respondents have filed Briefs in Opposition contemporaneously herewith.

Briefly stated, the allegations of the amended complaint for wages and damages are that petitioner is a member of Studio Local No. 946, affiliated with the United Broth-

erhood of Carpenters and Joiners of America; that he was employed for many years as a carpenter by the respondent under certain collective bargaining agreements including among them an agreement establishing a closed shop in favor of the Carpenters' Union [R. p. 20]; that although the respondent was obligated under such contracts to assign carpentry work tasks in its studio to petitioner and other carpenters, the respondent, on September 23, 1946, ordered petitioner from his work tasks and forced him to leave its premises without, however, discharging him, and assigned his work tasks to persons not members of Local No. 946 and not eligible for such work tasks under said contracts; that respondent has thus caused petitioner to be deprived of his work tasks and eligibility for same under the contracts, and of his right of collective bargaining, to his damage in the sum of $100 per week from September 23, 1946 [R. pp. 22-23]. The "collective bargaining contracts" are attached as Exhibits B-1 to B-9 of the complaint.

ARGUMENT.

We respectfully submit that this case certainly presents no grounds for the exercise by this Court of the discretionary Writ of Certiorari. The only question involved is the law of the State of California and its applicability to the "contracts" attached as exhibits to the complaint. The Court of Appeals correctly interpreted those contracts and correctly applied the law to them. There is no conflict whatever with any applicable local decisions which would be the only appropriate ground indicated by Supreme Court Rule 38. Certainly, decisions in cases of this type involving purely local law and the construction of agreements applicable only to the instant case do not present such "special and important reasons" to warrant review by the highest court in the United States.

Consequently, we submit that this case would not be one for the granting of the petition even if any attack could properly be made on the decision of the Court of Appeals. However, here we submit that decision is completely sound, correctly applies principles of California law to the allegations of the complaint, and is invulnerable to petitioner's attack.

The so-called "collective bargaining contracts" are attached to the complaint as Exhibits B-1 to B-9, inclusive [R. pp. 24-42]. In the main, they are not what are ordinarily recognized as collective bargaining contracts at all. Exhibit B-1 [R. p. 24] simply provides for a committee procedure for the discussion of mutual problems which might arise between the producers and various interna-

tional unions. All the rest of the "contracts," excepting Exhibits B-6 [R. p. 35] and B-9 [R. p. 37], are simply extensions of this procedural understanding. None of these, to which by the way neither petitioner nor his local union was a party, has anything to do with wages, hours or working conditions. The contracts had no provisions whatsoever in any way affecting the right of the employer to lay off or discharge employees.

Exhibit B-6 [R. p. 35] is a notification from a representative of the producers to the employees to the effect that pursuant to agreement between the producers and the international unions, including the IATSE and the Carpenters Union, "all employees working under the jurisdiction of the * * * unions would work under closed shop conditions" and that "every employee in a studio working under the jurisdiction of these above International Unions shall have to carry a card in his respective union."

Exhibit B-9, the "Interim Agreement," which is the only contract entered into between petitioner's union and the producers, and which on its face shows that its purpose was to halt one of the many work stoppages in Hollywood, does have provisions relating to wages and hours. However, no provision in that agreement guarantees or purports to guarantee any individual employee employment in any studio for any period of time. As a matter of fact, *it specifically provides that each studio may "award the work where in its judgment it belongs under the directive"* [R. p. 39]. For from guaranteeing the peti-

tioners the right to continue his work tasks as claimed by him, this agreement *does just the opposite* and by its terms permits the employer to allocate the work tasks "where in its judgment it belongs." Under that agreement, therefore, being the only one executed by petitioner's union, the alleged action of the employer in laying off the petitioners and assigning his work tasks to others, is strictly in accordance with its terms and cannot be the basis for any claim of breach of contract.

The contracts, then, gave these individual petitioners no right whatsoever to continue in the employment of the employer. Under California law, they could be laid off or discharged at will. (*Union Labor Hospital v. Vance Lumber Company* (1910), 158 Cal. 551, 554.) Whether we accept the view that the contract of hiring is completely separate from a collective bargaining agreement, although adopting its relevant terms, and that the only recovery is on the contract of hiring (*Yazoo & M. V. R. Co. v. Webb* (5th Cir., 1933), 64 F. 2d 902; see *Levy v. Superior Court* (1940), 15 Cal. 2d 692, 699) or the view that once hired the employee can recover as a third party beneficiary on those terms of the collective bargaining agreement made for his benefit (*Division of Labor Law Enforcement v. Dennis* (1947), 81 Cal. App. 2d 306) the same result follows. Since the contracts did not place any limitations on discharge or layoff and such could take place for any reason whatsoever, the petitioner cannot show any injury to him by such discharge or layoff.

The fact that after such discharge or layoff permitted by the contract, the employers may or may not have

breached the contract by hiring members of another union, is immaterial to petitioner. Of course, if there was such a breach of contract, the union for whose benefit such agreement was made, had an adequate remedy. (*Silva v. Mercier* (1949), 33 Cal. 2d 704; *Montaldo v. Hires Bottling Co.* (1943), 59 Cal. App. 2d 642.) It had such remedy just as it did for any other covenant made for its own benefit, such as, for example, agreements for the checkoff for union dues, the use by the union of bulletin boards at the plant, granting of access to the plant by union officials, recognition as a collective bargaining agent, furnishing to the union of lists of new employees and the like. But an *individual* whose discharge or layoff was not only not prohibited but actually permitted by these contracts has no standing to claim injury or damage to him under such contracts.

There is no case in California contrary to the decision of the Court of Appeals. The *Dennis* case, *supra*, apparently claimed by petitioner to be in conflict (Ptn. p. 15), held only that an employee could sue as third party beneficiary of a collective bargaining contract for wages at the rates therein set forth, since he became such beneficiary as to those rates when he accepted employment. There the contract contained a promise to pay such rates; here the contract contained no promise not to discharge or lay off and under California law the employer had full freedom in that connection. The implications of the *Dennis* case, the *Levy* case and the *Union Labor Hospital* case, all in this state, support the Court of Appeals' decision.

Cases from other states are in accord. *Volquardsen v. Southern Amusement Co.* (La. 1934, 156 So. 678) is a case directly in point. In that case, the employer discharged members of the IATSE working under closed shop agreements and employed non-union replacements. The individuals sued relying upon the closed shop provisions. In affirming a judgment for defendant, the court said:

> "A considerable part of the argument of plaintiff's counsel is devoted to the proposition that the defendant is indirectly attempting to abrogate its contract with the local because of dissatisfaction with the wage scale therein stipulated. Granting that to be so, *that is an issue which would lie exclusively between the defendant and the local union, the two parties to the contract. The plaintiff is limited to an enforcement of his individual rights under the contract. He cannot champion the rights of the local union as a whole.* All that is pertinent to an issue which can only arise between the union and the defendant is therefore irrelevant and immaterial in this proceeding, and will not be considered."

In *Milk Wagon Drivers Union v. Associated Milk Dealers* (D. C. Ill. 1941 42 Fed. Supp. 584) the court declared that an action would lie by the *union* to prevent the breach of an agreement for a closed shop but not by any individual employee. Other cases containing similar declarations include *Harper v. Local Union No. 52* (Tex. 1932, 48 S. W. 2d 1033); *Mountain States Division No. 17 v. Mountain States T. & T. Co.* (D. C. Col. 1948), 81

Fed. Supp. 397; and *Miss. Theatres Corp. v. Hattisburg Local* (Miss. 1936, 164 So. 887).

In the narrow point, therefore, presented in this case, that of the application of particular contracts to particular individuals, the Court of Appeals has correctly interpreted and applied the law of California. In view of the fact that the only jurisdictional allegations are those of diversity, we do not assume that petitioner depends upon rights under other Federal laws. If he does, however, such contentions are completely answered by the Court of Appeal's decision in the current *Schatte* case and by our Brief in Opposition to the writ in that case to which we respectfully refer.

The Petition for Writ of Certiorari in these consolidated cases should be denied.

Respectfully submitted,

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Counsel for all Respondents.

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Respondent.

BRIEF OF PETITIONERS IN REPLY TO OPPOSITION BRIEF OF RESPONDENTS.

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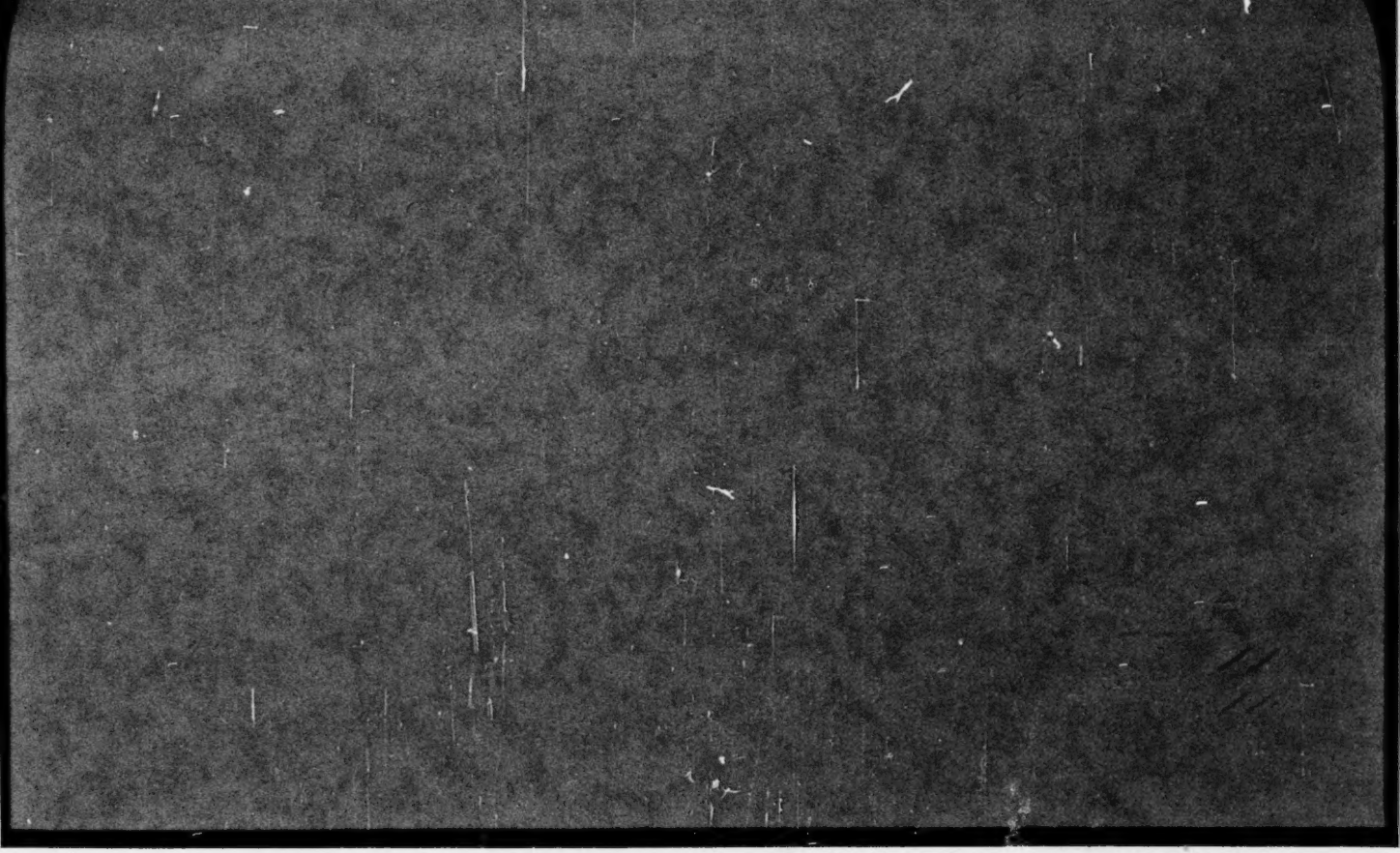

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Statement.

Petitioners respectfully call attention again to the jurisdictional allegations in the complaint [R. 19]:[1]

[1] "1. Jurisdiction is founded on diversity of citizenship and amount.

"II. Plaintiff is a citizen of the State of California, and defendant is a corporation, incorporated under the laws of the State of Delaware, and has a place of business in the Southern District of California, Central Division. The amount in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000) Dollars."

Right of Action Under Federal Law.

Petitioners' right of action under the federal law is shown in the consolidated reply brief being filed herewith in Cases Nos. 222 and 223. Reference is respectfully made to it to avoid repetition.

Right of Action Under California Law.

Petitioners' right of action under the law of California is not essential here if the Court sustains the federal right of action.

The error of the Court below, however, in casting a cloud upon the California law, is additional urgent ground, in the public interest, for granting the writ.

As pointed out in the petition the Court erred, as stated in Specification 5 (p. 7), as follows:

> "5. In holding, under California law, that individual employees may *only* 'sue directly on the collective bargaining contract *as a third party beneficiary to enforce the provisions* in the contract which have been *made for his benefit*' [R. 98-99], *and that 'the amended complaints failed to allege that appellees violated a provision* of the collective bargaining contract *which had been made for appellants' benefit*' [R. 99]." (Italics added.)

All provisions in collective agreements are made for the benefit of employees. It is so stated in Section 1 of the Wagner Act, 29 USCA 151, and Section 1(b) of the Taft-Hartley Act, 29 USCA Supp. 141(b). That is the

purpose of Section 7 of the Wagner Act, 29 USCA 157, as re-enacted in the Taft-Hartley Act, 29 USCA Supp. 157. The text of these sections is given in the appendix to the petition (pp. 1-2).

Meaning no disrespect to the Court below,[2] it is respectfully stated that the distinction drawn by the Court as above quoted is a distinction without a meaning. The very case cited by the Court below, *Division of Labor Law Enforcement v. Dennis,* 1947, 81 Cal. App. 2d 306, sustain the plaintiff's right of action therein for the violation of his collective agreement, as is shown by the discussion of the case in the petition (p. 15) and the quotation therefrom in the appendix (pp. 15-17).

Furthermore, Section 222 of the California Labor Code, referred to in the *Dennis* case,[3] but not in the decision of

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[2]"The employee, in addition to having rights under his individual contract of employment, may sue directly on the collective bargaining contract as a third party beneficiary to enforce the provisions in the contract which have been made for his benefit. *Division of Labor Law Enforcement v. Dennis,* 1947, 81 Cal. App. 2d 306; * * * The amended complaints fail to allege that appellees violated a provision of the collective bargaining contract which had been made for appellants' benefit." [R. 98-99.]

[3]"* * * Not only is such an employee a member of the class beneficially interested under such a collective bargaining contract but he seems to be given a direct statutory interest therein by section 222 of the Labor Code, which provides that it is unlawful to intentionally withhold from him any part of the wage provided for in such an agreement." (310.)

the Court below, expressly recognizes an employee's direct right under "any wage agreement arrived at through collective bargaining." This section is set forth in the appendix to the petition (p. 3).

It is respectfully submitted, therefore, that the writ should be granted, first, because a federal right of action exists, as is shown in the accompanying reply brief in Cases Nos. 222 and 223, and, second, to remove this cloud from the law of California.

Respectfully submitted,

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